REMARKS

The present amendment cancels claims 11, 23, 34 without prejudice or disclaimer as to the subject matter recited therein. In addition, claims 1, 7-10, 12, 13, 16, 18, 24, 26, 33, 35-37, and 40-42. Claims 1-10, 12-22, 24-33, and 35-42 remain pending in the captioned case. Further examination and reconsideration of the presently claimed application are respectfully requested.

Section 112 Rejection

Claims 7-10 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. In response thereto, claims 7-10 have been amended in a manner which is believed to address the concerns stated in the Office Action. Specifically, the terms "preferred" and "relative" have been removed to obviate this rejection. Accordingly, Applicants respectfully request removal of this rejection.

Section 102 Rejection

Claims 1-7, 14, 15, 18-32, 34, 37, and 38 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,549,937 to Auerbach et al. (hereinafter "Auerbach"). The standard for "anticipation" is one of fairly strict identity. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP 2131. Furthermore, anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, as arranged in the claim. *W.L. Gore & Assocs. V. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983). Using these standards, Applicants submit the cited art fails to disclose each and every element of the currently pending claims, some distinctive features of which are set forth in more detail below.

Auerbach does not teach or suggest sending at least a portion of a message using **each** of the selected communications applications, such that the entirety of the message is sent. Present independent claim 1 has been amended to include the subject matter from claim 11. Specifically, claim 1 now recites the step of "sending at least a portion of the message using each of the selected communications applications, such that the entirety of the message is sent." The Office Action notes on page 10: "Auerbach does not explicitly state sending at least a portion of the message using each of the selected communications applications, such that the entirety of the message is sent." Accordingly, the

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Examiner admits that absent such teaching, one would have to look to another reference (i.e., U.S. Patent No. 5,903,754 to Pearson) to disclose the subject matter of claim 1. Thus, newly amended claim 1 is admitted by the Examiner not to be anticipated by Auerbach. Accordingly, any rejections thereto must be addressed under 35 U.S.C. § 103. With respect to the remaining independent claims 18, 26, and 37, each of which have the aforesaid limitation, it appears there is some inconsistency in the Office Action characterizations.

While page 10 of the Office Action clearly states that Auerbach does not explicitly state the "sending" limitation, page 6 nonetheless refutes what is later stated on page 10. On page 6 of the Office Action, the Examiner states: "Auerbach discloses the limitations, substantially as claimed . . . including . . . sending at least a portion of the message . . . such that the entirety of the message is sent." Accordingly, Applicants are unclear as to what the Examiner believes is disclosed by Auerbach. Applicants will address Auerbach in further detail below when discussing the § 103 rejection. With respect to the remaining independent claims (claims 18, 26, and 37), there is no specificity described in the Office Action as to how these claims are anticipated by Auerbach. Accordingly, Applicants cannot address the rejections of these claims.

For the foregoing reasons, Applicants respectfully request that this rejection be removed in its entirety.

Section 103 Rejection

Claims 8-10, 33, and 40-42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Auerbach in view of U.S. Patent Application Publication No. 2003/0055844 to Rudd et al. (hereinafter "Rudd"). In addition, claims 11-13, 16, 17, 35, 36, and 39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Auerbach in view of U.S. Patent No. 5,903,754 to Pearson (hereinafter "Pearson"). To establish a case of *prima facie* obviousness of a claimed invention, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. Second, there must be a reasonable expectation of success. As stated in MPEP 2143.01, the fact that references can be hypothetically combined or modified is not sufficient to establish a *prima facie* case of obviousness. *See In re Mills*, 916 F.2d. 680 (Fed. Cir. 1990). Finally, the prior art references must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d. 981 (CCPA 1974); MPEP 2143.03. Specifically, "all words in a claim must be considered when judging the patentability of that claim against the prior art." *In re Wilson* 424 F.2d.,

1382 (CCPA 1970). Using these standards, Applicants contend that the cited art fails to teach or suggest all features of the currently pending claims, some distinctive features of which are set forth in more detail below.

The cited art does not teach or suggest sending at least a portion of a message using each of the selected communications applications, such that the entirety of the message is sent. Present independent claims 1, 18, 26, and 37 each recite the limitation of "sending at least a portion of the message using each of the selected communications applications, such that the entirety of the message is sent." This feature is grounded in the appreciation of what constitutes a "communication application." As set forth in the present specification, a communication application is a communication technique for sending information, such as a message, between computational devices (Specification -- pg. 2, lines 1-12). Examples of various communication applications include instant messaging, message boards, Internet chat, email, IP telephone, etc. (Specification -- pg. 2, lines 13-15; pg. 3, lines 13-15).

As described in the present specification, there may be many communication applications available to sending a message between computational devices. Unfortunately, availability of equipment, users, and software might determine that one application is more suitable than another (Specification -- pg. 2, lines 18-31). Changing from one communication application to another, however, can be inconvenient and burdensome, thus leading to the desirability to develop a communication system that can select the most appropriate communication application for a particular message (Specification -- pg. 3, lines 18-22).

In response to the conventional art, a communications aggregation technique (CAT) is hereby developed to bifurcate or "parse" a message into portions, and to send each of those portions using possibly different communication applications. The CAT program accesses the multiple communication applications in a way that is invisible to the user (Specification -- pg. 4, lines 1-16). A user can select the various communication applications through a graphical user interface (GUI), for example, by determining a data structure (Fig. 3), and assigning the data structure to a participant in which one or more messages can be sent in portions using different communication applications (Fig. 4) (Specification -- pg. 4, line 19 - pg. 7; line 31; pg. 14, lines 21-31; pg. 17, lines 21-31; pg. 18, line 20 - pg. 19, line 7). A communication session between participants can be initiated and a communication application used to carry messages between participants can be changed, as shown in Fig. 6 of the present specification, and described in an object-oriented fashion on pg. 19, line 28 - pg. 22, line 9.

Applicants agree with the characterizations made on page 10 of the Office Action: "Auerbach does not explicitly state sending at least a portion of the message using each of the selected communications applications, such that the entirety of the message is sent." Applicants disagree, however, with the assertion made on page 10 that Pearson somehow discloses this limitation. Pearson fails to teach or suggest that which is missing from Auerbach by (i) failing to make any mention of selecting one or more communication application, (ii) failing to make any mention of sending a portion of a message, (iii) failing to make any mention of sending a portion of a message using each of the selected communication applications, and (iv) failing to make any mention that the entirety of a message is sent by compiling portions sent using each of the selected communication applications.

Auerbach clearly teaches that a message cannot be separated into portions, with each portion sent with a corresponding communication application, since Auerbach in no way suggests bifurcation of a message or the use of communication applications of those bifurcated portions (Auerbach -- col. 4, lines 51-67). A skilled artisan, when looking to Auerbach, would readily discern that a message cannot be separated into portions. Moreover, a skilled artisan would readily glean that absent message portions, a communication application cannot be applied to each of those portions. The deficiencies of Auerbach are compounded by Pearson.

Nowhere in Pearson is there any suggestion that a message can be separated into portions. The only reference in Pearson is to a protocol stack, not to a communication application as defined in the present specification. Further still, the recited protocol stack in Pearson is in no way applicable to message portions. Instead, the protocol stack of Pearson passes an entire message from one layer to the next within the protocol stack, but in no way does Pearson suggest, recommend, contemplate, or inherently allude to a communication application applicable to message portions (Pearson -- Abstract). Moreover, a skilled artisan with knowledge of packet transfer and network communication would know that a protocol stack and protocol layer descriptions are in no way analogous to a communication application as defined in the present specification. Moreover, a skilled artisan when looking to Pearson would in no way gather that an entire message could somehow be hypothetically bifurcated into portions with communication applications used to respectively send each of those portions, as presently claimed in each of the independent claims.

There must be some suggestion in Pearson (or Auerbach) for separating a message into multiple sub-messages (or portions), and sending each of the portions using selected communication applications. There is certainly no such suggestion whatsoever from the cited art. Accordingly, Applicants respectfully request that this rejection be removed.

CONCLUSION

This amendment constitutes a complete response to the issues raised in the Office Action mailed November 10, 2004. In view of the remarks traversing the rejections, Applicants assert that pending claims 1-10, 12-22, 24-33, and 35-42 are in condition for allowance. If the Examiner has any questions, comments, or suggestions, the undersigned earnestly requests a telephone conference.

Should any fees be required, the Commissioner of hereby authorized to charge such fees to Deposit Account No. 09-0447.

Respectfully submitted,

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